

IN THE MATTER OF : BEFORE THE  
JOHN GUY : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 12-007V

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**DECISION AND ORDER**

On May 7, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of John Guy for a variance to reduce the 30-foot rear setback to 20 feet for an addition in an R-12 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. John Guy testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. Property Identification. The subject property is located on the west side of Downs Ridge Court about 750 feet north of Abel Street. It is officially identified as Tax Map 38, Grid 8,

Parcel 197, Lot 22 and is also known as 6179 Downs Ridge Court (the Property).

2. Property Description. The generally square Property is 14,618 square feet in size. The dwelling is sited in the northerly portion of the Property and sits at an angle to the driveway. A large deck is attached to the southern section of the dwelling's rear wall.

3. Vicinal Properties. All adjacent properties are also zoned R-12. The northern, eastern and western properties are residential lots in the same subdivision. The southerly property is an open space lot through which runs electric utility transmission lines.

4. Variance Request. The Petitioner is seeking a variance to enclose the rear deck as an addition. The addition would be 14 feet deep and 17 feet wide. Because the addition would encroach ten feet into the rear setback, the Petitioner is seeking a 10-foot reduction in the rear 30-foot setback imposed by Zoning Regulations Section 109.D.4.c.(1)(c).

5. Mr. Guy testified that the Property is unique because a wide drainage easement runs along the easterly side lot line and no building is permitted in this area.

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a.(1) through (4), and therefore may be granted.

**(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such**

**unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.**

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is encumbered by a drainage easement with the effect that there is a smaller building envelope. Consequently, the Hearing Examiner concludes the easement causes practical difficulty in complying with the setback requirements, in accordance with Section 130.B.2.a.(1).

**(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.**

Even with the reduced setback, the addition would not alter the essential character of the neighborhood or district in which the lots are located because multiple dwellings have

similar rear additions. The variance therefore will not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).

**(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulty in complying strictly with the setback regulation arises from the drainage easement and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

**(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.**

The proposed addition is for a reasonably sized addition. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

**ORDER**

Based upon the foregoing, it is this **10<sup>th</sup> Day of May 2012** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the variance petition of John Guy to reduce the 30-foot rear setback to 20 feet for an addition to a single-family detached dwelling in an R-12 (Residential: Single Family) Zoning District is **GRANTED;**

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain a building permit to enclose the existing deck.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

**Date Mailed:** \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.